

State of Nevada
Department of Indigent Defense Services
Board Meeting Minutes

Thursday, February 29, 2024

1:00 PM

Meeting Location:

| OFFICE | LOCATION | ROOM |
|--------|---------------------|------|
| | Virtual Only (Zoom) | |

1. Call to Order/Roll Call

Chair Mendiola called the meeting of the Board on Indigent Defense Services to order at 1:00 pm, on Thursday, February 29, 2024. He presented the attendees with the link for Zoom, meeting ID, passcode, and phone number to connect to the meeting.

Cynthia Atanzio advised the meeting was being recorded and conducted roll call. A **quorum was established**.

Board Members Present: Chair Mendiola, Vice Chair Laura Fitzsimmons, Chris Giunchigliani, Kate Thomas, Angela Cook, Susan Bush, Joe Crim, Allison Joffee, Joni Eastley, Harriett Cummings, Jeff Wells, Lorina Dellinger, and Jarrod Hickman.

Members not present: Justice William Maupin.

Others Present: Executive Director Marcie Ryba, Deputy Director Thomas Qualls, Deputy Director Peter Handy, Professor Eve Hanan, and Cynthia Atanzio.

2. Public Comment

Chair Mendiola opened the line for public comment. There was no public comment.

3. Introduction of New Board Members (For discussion and possible action)

Chair Mendiola welcomed the new Board members Susan Bush, selected by Clark County Board of Commissioners and Commissioner Joe Crim, from Pershing County.

Chair Mendiola advised the Board that he would be retiring from Humboldt County on March 22, 2024, and had opted not to continue serving as Chair of the Board. That brings us to voting on a new Chair and/or Vice Chair of BIDS.

Joni Eastley advised the Chair that she would be willing to make a motion and would like to select Laura Fitzsimmons as the Chair and Kate Thomas as the Vice Chair with an effective date of March 22, 2024.

Jeff Wells stated that he would second the motion.

Chair Mendiola stated that we have a first and a second on the floor, are there any questions.

Joni Eastley was curious if both ladies would accept the nomination.

Vice Chair Fitzsimmons thanked Ms. Eastley for the nomination and said she would accept it. It may be for a year or so while we bring some of our newest members or others and shuffle things. These will be huge shoes to fill. I am hoping that Kate Thomas is willing to accept the nomination.

Kate Thomas advised she would be happy to accept the nomination and support Ms. Fitzsimmons and try and fill the shoes left behind.

Chris Giunchgliani commented that the Chair had been a guiding light and helped steer us through the loss of Mr. Crowell.

Chair Mendiola thanked all and stated he was going to miss all and had learned so much. Any time you walk in a room with a bunch of attorneys it is a scary thought so thank you. Getting back to the motion on the floor we have a first and second, all in favor say aye.

Motion: Nomination of Laura Fitzsimmons as Chair and Nomination of Kate Thomas as Vice Chair Effective March 22, 2024

By: Joni Eastley

Second: Jeff Wells

Vote: Passed Unanimously

Chair Mendiola stated moving on to item four approval of the November 2, 2023, minutes.

4. Approval of the Minutes (For possible action)

Motion: Approve the Meeting Minutes of the November 2, 2023, Minutes

By: Chris Giunchgliani

Second: Jarrod Hickman

Vote: Passed Unanimously

5. Budget and Legislative Update (For discussion and possible action)

Director Ryba advised that there had been three counties that have requested reimbursement for fiscal year 2024 and they have already been reimbursed. This shows we are standing by the State of Nevada's promise to reimburse the counties quickly. We wanted to show how quickly many of the rural counties are approaching their maximum contribution and this is likely because of the enhancements they have built into their systems.

Joni Eastley asked if there were any other counties on the brink.

Director Ryba responded that Eureka is very close and likely to hit this next quarter. Lander will probably hit in the next quarter and Lincoln may it depends on how quarter three spending comes in and these are *Davis* specific counties. *Non-Davis* counties likely will not hit until the fourth quarter.

Chair Mendiola stated this is important that the counties are reaching these thresholds early in the year suggests that there has been a lot of change in these counties. These are all the things that we are here for to make things better.

Director Ryba stated that if you can recall AB 518 set aside 13 million dollars for the department to request funding from the IFC to comply with the *Davis* stipulated consent judgment. We did go to IFC and request funding for oversight, and this allowed us to contract with two knowable indigent defense providers and we are working on obtaining a third. In addition, we obtained funds for indigent defense training, funds to enhance our training program, and funding to encourage our pipeline system. The State Bar of Nevada is providing stipends again with the assistance of Boyd School of Law for students to come into the rural counties and practice with public defenders. Other funding obtained was used to renew our contract with LegalServer and funding to contract with Westlaw for individuals who join our indigent service groups. We submitted another work program that we hope will be heard in April to enhance the staff for the NSPD. To comply with the increased workload, White Pine will need four attorneys. To comply with the new workload standards, we anticipate there will be a lot of new attorneys and believe training should be available to learn the basics. That would include how to be a public defender, how to read a police report, and how to investigate a case. Currently there are training programs in Washoe and Clark counties covering this and we would like to replicate that.

Joni Eastley commented that it never occurred to her that we would need to train an attorney on how to read a police report.

Director Ryba replied that the importance is to know what to look for. It is always important to be able to look at the crime and realize what are the elements that the state must prove and then you go through the police report like you are a district attorney. It is a great skill that is necessary to have, and we are suspecting that we may be getting a lot of attorneys in the rural areas. We are going to be filling these positions and want to make this training available.

Chair Mendiola commented that was great news and a great job done by Director Ryba and her staff.

Deputy Ryba stated that LCB file number R033-23 has been filed with the Secretary of State and became effective December 15, 2023, upon filing. With these new regulations this Board set this hourly rate for appointed counsel at a similar rate to what the Federal CJA panel is receiving. Another benefit of the regulations is it is going to require our rural counties to comply with that workload requirements and set it up in their plans on how they intend to comply.

6. Oversight and Davis Update: (For discussion and possible action)

Deputy Director Qualls stated that the update for NSPD is that Chris Arabia resigned effective January 26, 2024, which caused a little disruption in service especially in White Pine County. Patty Cafferata and Jim Hoffman have been covering admirably. Derrick Penney has been hired and is in Ely full-time. We are informed by the Governor's office that a new appointment has been chosen for the head of the NSPD but have named that person yet. We currently continue to work with Boyd Law School for summer interns and are working to secure funding for a three-year, three-stage LASSO program. We have worked to get a rule change to allow student interns to continue limited practice between graduation and when they pass the bar for up to 18-months under the supervision of someone else's license. Director Ryba and I provided testimony for an additional rule change to expand the current limited practice for out-of-state PDS which is limited to two years. The department has been working with the GFO and the Governor's Office to find creative ways to achieve pay parity for the NSPD attorneys. We have been given authority to create a duty workstation in Clark County.

Joni Eastley wanted to go back to the resignation of Chris Arabia. Do you know how many people applied for an appointment to his position?

Deputy Director Qualls explained that they did not release an application. They did not bring us into the process and it was handled internally by the Governor.

Vice Chair Fitzsimmons wanted to know about the Clark County office and what that is going to look like.

Director Ryba stated that when the attorney positions were posted for White Pine that for the entire time, there were zero qualified applicants. There are some real factors against us in White Pine County, limited housing, lack of pay parity with the DAs, and lack of attorneys. There is funding set aside in AB 518 for pay parity but when it comes to a state office the legislature sets the salaries for state employees. We have reached out to the Governor's office to help us prepare a request whether it is stipends or if there was an error in the pay bill that sets forth salaries. We are trying to find out how we can get pay parity with the DAs, as this is really causing an issue with our NSPD, and we cannot have an economic disincentive to go to court. Derrick Penney was hired by the NSPD for Ely (his workstation) and lives in Las Vegas and we cannot reimburse him for travel to Ely, so he is paying out of pocket for his weekly travel for court. We pulled information from the State Bar and there are 12 attorneys listed for White Pine County. Two are retired, one has moved, four work for the DA, one is married to a DA, one works for the AG's office, one is a county manager, and two are private attorneys who do not want to work at the PDs office. This has shown that we are either going to need to solve the issue of pay parity, think creatively, and hire more staff out of Clark County and rely on transportation.

Chris Giunchgliani stated they used remote pay as a way we used to do it for our rural teachers, and it counted toward PERS so maybe that is something to discuss with the Governor's office for consideration. There used to be a statute that each year a teacher worked in an unserved area they got extra credit toward retirement. It is sad that in 2024 we are still dealing with this kind of an issue but maybe a remote pay stipend that counts toward their PERS might be an incentive as well.

Director Ryba replied that she would put that down for an idea.

Jeff Wells commented that he liked Director Ryba's idea and I support pay parity. The concern with this option is you are going to end up with folks living in Las Vegas, doing defense in White Pine using it as a training place and they will end up moving to the county because the pay is higher.

Director Ryba stated that I do not disagree, but I think we are just trying to make sure that we have court coverage until we can get pay parity. The next legislative session is coming up quickly, so this is a priority for us.

Chris Giunchgliani stated that she agreed with Jeff Wells and believes that they had to commit to a certain number of years in that position.

Allison Joffee explained that when she started at the Carson City DA's office theoretically you made a two-year commitment. None of us knew anything and it was a training ground so after the two years most of the DDAs went to Washoe County DA's office. There is probably nothing you can do to stop it, but a few may remain in the smaller communities.

Director Ryba stated that brings up a great point as we are trying to think creatively and reaching out to other states as this is a nationwide problem. In other states they are replicating the student loan forgiveness provided to their rural doctors to get physicians into the rural areas. That is a federal grant where they pay

\$50,000 toward student loans for a two-year commitment. We are kicking around ideas to present to this Board of student loan forgiveness because we need to incentivize them to come to our rural communities.

Joni Eastley stated she had a question for Director Ryba and all the attorneys on the line. Is it possible that a defendant could file a post-conviction complaint of inequity because there are more experienced public defenders in the bigger communities.

Deputy Director Qualls explained that a defendant or an appellant can file whatever they want, and the question is whether the claim has merit or not. Inexperience alone would not be adequate grounds for a finding of an ineffective assistance claim.

Laura Fitzsimmons stated that she would like to expand on that. When you see everything that we have undertaken in light of *Davis* it is the kind of class action or institutional challenge that has motivated the state and everybody that helped us come together and do what we are doing to negate that threat. I started at the Supreme Court and our state public defender's office, and I was never a better lawyer even though I was inexperienced. If we get new lawyers to come to White Pine County that are not burnt out, there are mostly prison cases which are hard cases, but they are good to learn on because there is not a huge downside.

Susan Bush stated that what we learned this week was that over 50% of the public defenders in Clark County have less than five years of experience so there are new attorneys everywhere. We had a big majority of our 16 public defenders become judges and they were mid-level attorneys and then with COVID there was a huge gap.

Deputy Director Qualls explained that he would be addressing the Monitor's 11th report and her concerns. The main concern is the understaffing of the Nevada State Public Defender's office which we continue to address. The second issue would be the NCSC caseload limits, which is relatively new, and we just started doing the case weight analysis. Director Ryba, Deputy Director Handy and I have divided up the 15 rural counties to make sure they comply as soon as possible or by November. Some attorneys continue to under report, and a few do not report at all. We should start to see more robust reporting as we have provided Westlaw free if you are in compliance with reporting. The monitor's report is rather extensive and the monitor or I am available for questions.

Professor Hanan wanted to express her gratitude for the department for being so helpful. I am not always timely in my requests to them, and they get me the information that I need often at the last minute to write my report.

Deputy Director Qualls advised that quarterly reporting had been provided in the Board's packets but was also available on the website. It is a little different because we do have workload standards and Stan Morrice has been instrumental in plugging in the case weights to our existing data. Now we can assign those case weights to each type of case, and we can run specific reports that better show how much work these caseloads actually represent.

Director Ryba wanted to add that there was a snapshot of a graph that Stan put together with all the counties. Nye County is extremely out of whack when compared to what other counties have in their workloads and it appears they need more than 32 attorneys. There has been a lot of switching of attorneys creating an issue with the data which we hope will be cleaner by next quarter. I think this gives a nice visual showing that workloads being recommended in the study are right on. When we sent out the paper materials, we included a visual snapshot and Excel spreadsheets. Finally, we were wondering if the Board could advise whether they would like to see just the snapshot and refer to the website for the spreadsheets or if you would like them printed off for review.

Chair Mendiola asked if there were any thoughts on that and he liked the idea of just being able to refer to the website but sometimes folks like to see hard copies.

Vice Chair Fitzsimmons advised that she thinks the screenshots are great, but we do not need all the Excel sheets.

Chris Giunchigliani stated that she echoed that and would rather look online and save a tree if the information is flagged if we need to deal with it.

Kate Thomas commented that was a thumbs up, sounds good.

Chair Mendiola stated just give us the snapshot and we can refer to the website if we want to dig into it.

Deputy Director Qualls advised he would be moving onto the workload. We started in November and December contacting stakeholders as soon as the Board approved the NCSC study to come up with a plan to revise their plans to include these new numbers. The response has been positive even to the extent that their Board members and the DA were wondering if the increase was going to be enough. There are a few counties that have more challenges than others as they are more geographically remote. We are working with them and encouraging them to think creatively, possibly adding contracts to the offices.

Director Ryba stated that the annual reports are due in May, and this is where the counties will tell us how they will be budgeting for the increases. It was important for us to reach out to the counties prior to the new year so they knew this was coming and they could budget for it. We reminded them that the maximum contribution formula is now in statute and no longer in regulation. Assembly Bill 518 has 13 million dollars in it so the rural counties can make those improvements and if the 3.5 million dollars allocated to reimburse them is insufficient, we can request money from the 13 million dollars. With the passage of Assembly Bill 424 we can make a request to the statutory contingency account that is over the maximum and it must be provided to us, so we have a clear pathway to obtain funding.

Deputy Director Qualls explained that this has been key in every conversation we have had with the counties. This is a safety net and provides reassurance that these increases will be paid for through reimbursements and puts everyone at ease. We are excited that we were able to contract with two oversight analysts and a third is in the works. Having boots on the ground has been a consistent concern for Professor Hanan and we are really excited about having these qualified people in the field. We have been working on our advocacy and support of ADKT 611 and 616. ADKT 611 allows student interns to continue to work in a public defender's office for up to 180 months between graduation and taking the bar. ADKT 616 is currently before the court and removes the two-year limited practice in rural public defender's office which is very exciting as both create additional pipelines to staff rural offices. ADKT 617 has a committee created to revise Supreme Court rule 250 and I am on the committee. If a county gets a death penalty case, Supreme Court rule 250 is outdated and not in compliance with Chapter 180 so a big overhaul is going to happen.

7. Training Update (For discussion and possible action)

Deputy Director Handy stated that we obtained an interlocal contract with DETR and we received \$50,000 in funding. We have authority to spend that over a two-year period and anticipate we will have \$17,000 left over for next year. We are spending that on a variety of things, some are going to pay for DID's employee training, helping our people get better at LegalServer and making connections at the State Bar Conference. The lasso program will require a huge amount of funding to create a pipeline. The lasso acronym stands for Law Student Supervision Operations and gives stipends to 1L, 2Lm and postgrad students. The stipends will provide funding to help them work in a public defender's office in a rural county with hands-on training

that cannot be replicated. We should have 10 students each year allowing us to do outreach to other law schools instead of just Boyd Law School to bring in students who might not otherwise consider rural Nevada. We obtained six slots for rural attorneys to attend the Mountain Skills Academy in Salt Lake City, Utah which will be fully funded. Our conference is scheduled June 6th and 7th in Las Vegas, and we have partnered with the NACDL and they are providing technical assistance through Deja Vishny. She is a nationally recognized expert, a former public defender in Wisconsin and has connected us with fantastic speakers and trainers for our conference. There will be 12 different CLE classes and eight different speakers from around the country so we can give the highest quality instruction to our public defenders throughout the state. This year we are focusing on DUIs as this is one of the highest charged cases in the state. Nevada Public Health Foundation is doing most of the coordinating for the conference, taking a lot of work off our shoulders and is invaluable.

Director Ryba wanted to add that the annual conference is going well, and we may be reaching out to some of our rural counties to see if they would like to sponsor any events. To clarify, LASSO has been approved at DETR and we must go the Board of Examiners for final approval. Not only do we have those stipends to pay students we also have 15 stipends for \$6500 to help students train for the bar. We are hoping to work with our local communities when they are bringing in attorneys, and tie this to ADKT 611. This will allow students to practice law immediately and fill these new positions we are creating for the workload and as an incentive for our rural counties. This has not been fully approved but we are excited and wanted to share.

Joni Eastley questioned if during the annual conference there were drawings? Because if you do the town of Tonopah would like to donate a big basket for your drawing if you have one.

Deputy Director Handy replied that this year we will be doing a drawing.

Director Ryba stated that would be a good idea and thanked Joni Eastley. We got some free T-shirts from the NACDL that we are going to give away so anything we can do to get our public defenders excited and interested in coming.

Chris Giunchgliani stated that sometimes the local Chamber of Commerce will donate things so you may want to check with them.

Chair Mendiola expressed that they were all good ideas and thanked Deputy Director Handy for his presentation. Are there any questions specific to his report. Let us move on to item 8 for upcoming meetings for discussion and possible action.

8. Upcoming Meeting. (For discussion and possible action)

Chair Mendiola stated there is a request to move the June 6, 2024, meeting and some possible dates are June 13th or June 14th.

Director Ryba reminded the Board that we have to set a meeting in June because the Board must approve our annual report which is due to Governor, the Legislature, and Supreme Court on July first. Due to the State Bar Conference which is the 27th and 28th we are requesting to have it on June 13th or 14th. We always like to have one that is in person and tried to find space in Lake Tahoe which is either very expensive or not available for a meeting our size, so we are also asking you to consider a different location, possibly Carson City.

Joni Eastley recommended the NACO office in Carson City. It will not cost anything, and they have video capability with a nice big conference room.

Director Ryba thanked Ms. Eastley and said that she could reach out to Vincent and see if he is willing to give us that space. Other space we could consider is the Old Chambers or the Legislature.

Vice Chair Fitzsimmons asked if we could tie down a date in June because we are all busy in June traveling.

Director Ryba replied that the 13th is a Thursday, when we usually hold our meetings, and the 14th is a Friday in case people are traveling.

Joni Eastley advised the Chair that she would make a motion to have the meeting on Friday.

Vice Chair Fitzsimmons stated she would second that motion to meet on Friday, the 14th, in Carson City at a location to be determined.

Motion: To Hold June Meeting on Friday, the 14th, in Carson City at a Location to be Determined

By: Joni Eastley

Second: Vice Chair Fitzsimmons

Vote: Passed Unanimously

Director Ryba explained that we would like to keep the August 1st meeting virtually as we may need input from the Board about our budget. We are going into another legislative session and according to statute we need this Board to loosely approve our budget.

Chair Mendiola agreed that we will leave that date and we shall move on to public comment.

9. Public Comment

Public Comment: The Board unanimously expressed their sadness and gratitude to Chair Mendiola in light of his retirement.

10. Adjournment.

Chair Mendiola expressed that it had been a pleasure to serve on this Board and vowed to try and stay in touch. He then adjourned the meeting at 2:15 p.m.